

Assembly Bill No. 1647

CHAPTER 978

An act to amend Sections 41780 and 41780.1 of, and to add Sections 40124 and 41781.3 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 1996. Filed
with Secretary of State September 27, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1647, Bustamante. Solid waste landfills: alternative daily cover: diversion.

Existing law, the California Integrated Waste Management Act of 1989, establishes an integrated waste management program administered by the California Integrated Waste Management Board and defines the terms "solid waste," "solid waste disposal," and "recycle" for purposes of the act. The act provides for the permitting of solid waste disposal facilities, including solid waste landfills, as defined.

The act requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan that includes a prescribed implementation schedule showing how the city, county, or regional agency will divert materials from solid waste disposal through source reduction, recycling, and composting activities.

Materials are applied at, and in the operation of, solid waste landfills as alternative daily cover for health and safety purposes.

This bill would define "diversion" for purposes of the act and declare that beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, constitutes diversion through recycling. The bill would specify that, pursuant to the board's general regulatory authority, the board shall adopt rules and regulations prior to December 31, 1997, that establish conditions for the use of alternative daily cover.

The bill would make clarifying changes in provisions pertaining to local agency diversion requirements.

The bill would also make related legislative findings and declarations.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The diversion of solid waste from disposal at solid waste landfills and the application of landfill cover materials are matters of statewide concern and provisions governing those activities must be applied in a uniform and consistent manner throughout the state.

(2) On January 25, 1995, the California Integrated Waste Management Board adopted a policy regarding the use of alternative daily cover at solid waste landfills and subsequently adopted implementing regulations that were approved by the Office of Administrative Law.

(3) In *Natural Resources Defense Council vs. California Integrated Waste Management Board*, the trial court's opinion interpreted the meaning of various provisions of the California Integrated Waste Management Act of 1989 and, in its construction of provisions pertaining to alternative daily cover and diversion at solid waste landfills, misinterpreted legislative intent.

(4) The board's policy, as adopted on January 25, 1995, and the implementing regulations, regarding the use of alternative daily cover at solid waste landfills are consistent with applicable statutes.

(5) It is necessary to amend applicable provisions of the act of 1989 to clarify existing law so as to clearly express the legislative intent and to remove any uncertainty as to the authority of the board to adopt the implementing regulations specified in paragraph (4).

(6) It is necessary to amend provisions of the act of 1989 to clarify the intent of existing law that the diversion of solid waste from solid waste disposal is diversion under the act of 1989 for purposes of meeting the requirements of Sections 41780, 41780.1, 41780.2, and 41781 of the Public Resources Code, as distinguished from diversion of solid waste from a solid waste disposal facility.

(b) (1) The Legislature further finds and declares that, at the present time, the amount of green materials generated in California is in excess of the quantity that existing markets can absorb. It is thus in the interests of the state to encourage the expansion of markets for green materials.

(2) It is the intent of the Legislature that the California Integrated Waste Management Board, and other state agencies, continue their efforts to promote the expansion of compost and other markets for green materials, including, but not limited to, the compost market program activities specified in Chapter 5 (commencing with Section 42230) of Part 3 of Division 30 of the Public Resources Code.

SEC. 2. Section 40124 is added to the Public Resources Code, to read:

40124. "Diversion" means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6.

SEC. 3. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule which shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first revision of the element, the city or county shall divert 50 percent of all solid waste by January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these goals.

SEC. 4. Section 41780.1 of the Public Resources Code is amended to read:

41780.1. (a) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a regional agency is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the regional agency shall use the solid waste disposal projections in the source reduction and recycling elements of the regional agency's member agencies. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(b) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a city or county is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the city or county shall use the solid waste disposal projections in the source reduction and recycling elements of the city or county. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(c) To determine achievement of the diversion requirements of Section 41780 in 1995 and in the year 2000, projections of disposal amounts from the source reduction and recycling elements shall be adjusted to reflect annual increases or decreases in population and other factors affecting the waste stream, as determined by the board. By January 1, 1994, the board shall study the factors which affect the generation and disposal of solid waste and shall develop a standard methodology and guidelines to be used by cities, counties, and regional agencies in adjusting disposal projections as required by this section.

(d) The amount of additional diversion required to be achieved by a regional agency to meet the diversion requirements of Section

41780 shall be equal to the sum of the diversion requirements of its member agencies. To determine the maximum amount of disposal allowable for the regional agency to meet the diversion requirements of Section 41780, the maximum amount of disposal allowable for each member agency shall be added together to yield the agency disposable maximum.

SEC. 5. Section 41781.3 is added to the Public Resources Code, to read:

41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.

(b) Prior to December 31, 1997, pursuant to the board's authority to adopt rules and regulations pursuant to Section 40502, the board shall, by regulation, establish conditions for the use of alternative daily cover that are consistent with this division. In adopting the regulations, the board shall consider, but is not limited to, all of the following criteria:

(1) Those conditions established in past policies adopted by the board affecting the use of alternative daily cover.

(2) Those conditions necessary to provide for the continued economic development, economic viability, and employment opportunities provided by the composting industry in the state.

(3) Those performance standards and limitations on maximum functional thickness necessary to ensure protection of public health and safety consistent with state minimum standards.

(c) Until the adoption of additional regulations, the use of alternative daily cover shall be governed by the conditions established by the board in its existing regulations set forth in paragraph (3) of subdivision (b) of, and paragraph (3) of subdivision (c) of, Section 18813 of Title 14 of the California Code of Regulations, as those sections read on the effective date of this section, and by the conditions established in the board's policy adopted on January 25, 1995.

(d) In adopting rules and regulations pursuant to this section, Section 40124, and this division, including, but not limited to, Part 2 (commencing with Section 40900), the board shall provide guidance to local enforcement agencies on any conditions and restrictions on the utilization of alternative daily cover so as to ensure proper enforcement of those rules and regulations.